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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,650	03/16/2004	Yutaka Tabata	559452000100	3943

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MORRISON & FOERSTER LLP  
755 PAGE MILL RD  
PALO ALTO, CA 94304-1018

EXAMINER
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WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/802,650

Applicant(s)

TABATA, YUTAKA

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, Species A in the reply filed on 1/18/07 is acknowledged. This is not found persuasive because the search area of each invention is not commensurate with any other invention and the search of each invention would require different search strategies.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Stahmann et al, EP 1145653, JP 57-177683, and JP 57-102166.

Stahmann et al (col. 2), EP 1145653 (e.g. paragraphs 1-16), JP 57-177683 (Abstract), and JP 57-102166 (Abstract; Figure) each discloses dipping or immersing nuts into a cryogen (e.g. liquid nitrogen) and then subjecting same to cracking or crushing into pieces. It is expected that the nuts would possess some pre-cracking due to the extreme change in temperature. Moreover, such treatment is similar to that employed in the preparation of the product of the instant claims.

4. Claims 6, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Stahmann et al, EP 1145653 or JP 57-177683.

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All of the references have been discussed above. However, EP 1145653 further discloses dipping said nuts into the cryogen by use of a container (e.g. basket). Although JP 57-177683 and Stahmann et al do not specifically articulate cryogen exposure of the nuts using a container, it is expected that same would exist due to the recitation in the Abstract of JP 57-177683 and reference to element 16 in Stahmann et al (i.e. cryogenic dip) that said nuts would be dipped into the cryogen using a container. Clearly, dipping would require a type of containment of the nuts as they are being treated and removed from the cryogen.

Stahmann et al (see col. 4, lines 44 and 57), EP 1145653 (col. 3, line 22), and JP 57-177683 all disclose products which have been crushed or milled thus inherently setting forth a reduction in fragment size to small fragments as called for in claim 10.

5. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 57-102166.

JP 57-102166 has been discussed above and further discloses reducing the nut into fragments and smaller nut fragments as same pass through granulator B and blowing air into the cracked nut fragments to separate same (see cyclone C).

6. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Stahmann et al and EP 1145653.

Both Stahmann et al and EP 1145653 have been discussed above and further disclose removal of the outer skin/husk of the nut after the cryogen cracking step.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stahmann et al or JP 57-177683 and further taken together with EP 1145653.

If it is shown that Stahmann et al or JP 57-177683 do not inherently employ containment means in dipping the nuts into the cryogen, it is notoriously well known to employ such method as taught, for example, by EP 1145653. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such containment means in facilitating the dipping action as a matter of preference among available dipping means.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Stahmann et al, JP 57-177683, or EP 1145653 and further taken together with JP 57-102166.

The claims further call for the separation of nut fragments by blowing air. However, such step is notoriously well known. For example, JP 57-102166 teaches blowing air into the cracked nut fragments to separate same (see cyclone C). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such step to provide grouping of fragments of a certain size as a matter of preference.

### ***Prior Art***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

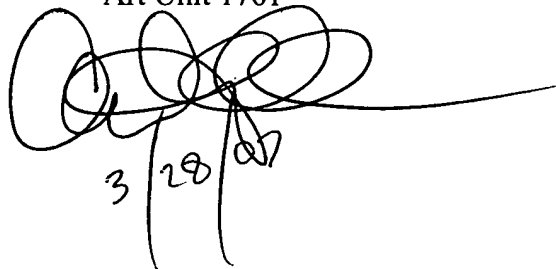
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
March 28, 2007

Anthony Weier  
Primary Examiner  
Art Unit 1761



Handwritten signature of Anthony Weier, dated 3/28/07.